**IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL**

**Writ Petition No. 2981 (S/S) 2001**
(Old no. 13233 of 1997)

Jai Prakash Singh S/o Sri Ram Kishan Singh,
Resident of village Mahuakhurd, Post-Sohang,
District Padrauna, at present working-
As Assistant Teacher in Tarai Vidhyapeeth,
District Udham Singh Nagar. --- Petitioner.

Vs.

1. District Basic Education Officer, Nainital
2. State of U.P., through its Secretary, Education, Lucknow,
3. Committee of Management, Tarai Vidhyapeeth,
   Junior High School, Premnagar, Gadarpur,
   Udham Singh Nagar, through its Manager,
4. Jai Prakash Pandey S/o Sri Indrasan Pandey,
   Resident of village & Post Premnagar,
   District Udham Singh Nagar. ---- Respondents.

Sri P.S. Bisht, Holding brief of Sri Rakesh Thapliyal Adv. & Sri Lalit Sharma, learned counsel for the petitioner
Sri S.N. Babulkar, learned Sr. Counsel Assisted by Sri Tumul Nainwal, Ad. for the respondent no.4,
Sri Paresh Tripathi, learned Standing Counsel for the State of Uttarakhand and
Sri S.K. Mandal, Adv. for committee of management.

**Hon'ble M.M. Ghildyal, J.**

Heard Sri P.S. Bisht, Holding brief of Sri Rakesh Thapliyal Adv. & Sri Lalit Sharma, learned counsel for the petitioner, Sri S.N. Babulkar, learned Sr. Counsel Assisted by Sri Tumul Nainwal, Ad. for the respondent no.4, Sri Paresh Tripathi, learned Standing Counsel for the State of Uttarakhand and Sri S.K. Mandal, Adv. for committee of management.

By means of this writ petition, the petitioners have prayed for the following reliefs: -

i. Issue writ of certiorari quashing the impugned order dated 10.03.1997 passed by respondent no.1, District Basis Education Officer, Nainital (annexure-11),

ii. Issue writ of mandamus directing the respondent no.1, District Basic Education Officer Udham Singh Nagar to pay salary to the petitioner on the post of Assistant Teahcer since October 1996 and onwards month to month in accordance with law,

iii. Issue any other or further writ, order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case,

iv. Award cost of this petition to the petitioner.

Counsel for the parties have contended that the petitioner as well the respondent no. 4 both are teaching in Tarai Vidhyapeeth Junior High School, Premanagar-Gadarpur, District Udham Singh Nagar on the basis of appointment provided to them by the Committee of Management of the Institution.

Counsel for the petitioner has submitted that on the basis of appointment provided by the respondents, he is continuously working in the Institution for about 20 years. It is further submitted by the learned counsel for the petitioner that appointment of respondent no. 4 was held to be illegal by the District Basic Education Officer.

Two persons, namely the petitioner and respondent no. 4 are claiming that they are working in the Institution as Assistant Teacher for about 20 years. Though, both the parsons are teaching in the Institution but the petitioner is getting salary and the respondent no. 4 is being deprived of getting the salary, as there is only one post available with the Institution.

On the Contrary, learned counsel for the respondents have submitted that appointment of the petitioner was made in violation of the Rules, and in fact, it has already been recorded by the District Basic Education Officer, that the appointment of the petitioner is not accordance with the Rules.

Considering this fact that both the persons, the petitioner as well respondent no. 4, are teaching in the same Institution for the last about 20 years, this Court directed the Addl. Advocate General to seek instructions from the Department as to whether either of the two can be adjusted in some other Institution, keeping in view that they have rendered services in the Institutions for more than 20 years and now have become overage. Accordingly, this Court on 27th July 2004 has passed order to the following effect: -

*"......It is not disputed by either the Committee of Management or the B.S.A. that Sri Jai Prakash Singh, the petitioner in w.p. no. 2981 (S/S)2001 was appointed in 1983 and since then he is teaching in the Institution. In respect of Sri Jai Prakash Pande, who is respondent no. 3 in w.p. no. 2984 (S/S)2001, counsel for the Committee of Management has submitted that according to the attendance register, Sri Jai Prakash Pande is working in the Institution since 1990. From the perusal of the order of Basic Education Officer dated10.03.1997, it appears that Sri Jai Prakash pande was appointed sometime in 1984 or prior to 1984 by the Committee of Management. The Basic Education Officer has recorded finding on the basis of certificate issued by the Committee of Management to Sri Jai Prakash Pande. In view of the fact that both the persons i.e. the petitioner and the respondent no.3 are teaching in the Institution for the last about 20 years, I direct the Addl. Advocate General Sri U.P.S. Negi to seek instructions from the Department as to whether either of the two can be adjusted in some other Institutions, keeping in view that they have rendered services in the institutions for*

*move than 20 years and are now become overage. Learned Addl. Advocate General has sought two weeks' time to seek instructions."*

Again on October 5,2005, this Court has passed order to the following effect: -

*".....Learned Standing Counsel submits that he has received narrative today and he may be granted a week's time to file counter affidavit.*

*One week's time is allowed to learned Standing Counsel for filing counter affidavit. List the petition on 20th October 2005.*

*It is not disputed by either of the parties that the petitioner as well as respondent no. 4 both are teaching in Tarai Vidhyapeeth, Premnagar, Udham Singh Nagar and the respondent no. 4 is not getting salary. On one hand, the Committee of Management submitted that the respondent no.4 was not, at all, appointed in the Institution, on the other hand they have admitted that the respondent no. 4 is teaching in the Institution since 1991. If the respondent no. 4 was not appointed in the Institution and his appointment was not approved by the Competent Authority, the Committee of Management shall show cause that under which circumstances they have permitted the respondent no. 4 to teach in the Institution and if they have permitted him to teach in the Institution; they cannot escape from their liabilities and they are responsible to pay salary to respondent no.4.*

*The Manger, Committee of Management shall remain present personally before the Court on the next date fixed with all the relevant records to explain as to why the respondent no. 4 is not being paid salary when he is continuous working in the Institution."*

Since disputed question of facts are involved in this writ petition, thus this Court cannot pass order under Article 226 of Constitution of India particularly in the matter where disputed question are involved.

Consequently, I direct the Joint Director of Education, Govt. of Uttarakhand, to take decision in the matter, after affording opportunity of hearing to both the persons i.e. the petitioner as well as respondent no.4 and after recording evidence that amongst two who is the legally appointed teacher in the Institution, and pass appropriate orders within a period of three months from the date of production of certificate copy of this order.

With these directions, the writ petition is finally disposed of. No order as to costs.

**(M.M. Ghildiyal, J.)**

April 26,2007
NCM: